

General Information Letter: Illinois income tax law generally follows the provisions of the Uniform Division of Income for Tax Purposes Act provisions for apportionment of business income.

February 16, 2001

Dear:

This is in response to your letter of January 9, 2001 in which you request a private letter ruling. Department rules require that the Department issue two types of rulings, private letter rulings and general information letters. The Department has adopted rules concerning letter rulings and other information issued by the Department (*2 Ill. Adm. Code 1200*). We would be happy to send you a copy of those rules at your request.

Although you have not requested either type of ruling on behalf of your company, the nature of your questions and the information you provided necessitates that we respond in the form of general information letter. A general information letter, which is designed to provide general information, is not a ruling that is binding on the Department.

In your letter you wrote:

As industry location consultants and state tax analysts, we would appreciate your assistance in responding to the income apportionment and allocation questions frequently presented to us by major conglomerate corporations with substantial expansion plans then under serious consideration. For example,

1. Has your state officially adopted the Multistate Tax Commission's recommended income apportionment formula as set out in the Uniform Division of Income for Tax Purposes Act? In the alternative, does a corporation have the option, as permitted in some states, of electing to use the uniform apportionment formula as opposed to the formula otherwise proscribed? If not, please highlight the differences and variations in the formula make-up and definitions your law requires to be taken into consideration when calculating the apportionment ratios and percentages to be used for income tax liability purposes; and,

**ANSWER:** NO, NO

2. Does your State classify a corporation's income as business income or non-business income according to the referenced Uniform Division of Income for Tax Purposes Act? If there are differences in the definition of non-business income, please describe as fully as you deem applicable, using conceptual examples where appropriate; and,

**ANSWER:** Yes

3. In the application of the apportionment formula prescribed in your State's statute, what special procedural provisions are to be considered and honored if the corporation's commercial domicile is ultimately held to be in your State? For example, some states have special requirements in assigning non-business income and income from tangible and intangible assets; and, for sales ratio purposes, the special assignment of sales to the U.S. Government and sales to purchasers in states where the seller corporation is

not doing business. Also, some states have special provisions regarding movable equipment and the valuation of inventories in calculating the property ratio. Your comments and advice on these matters will be quite helpful; and,

**ANSWER:** Commercial domicile is merely one factor to be accounted for in allocating/apportioning income. For Illinois income tax purposes, corporations are never residents of Illinois. §1501(a)(14) and (20). Under §301 of the Illinois Income Tax Act ("IITA") income is apportioned to Illinois based upon residency. Corporations determine income based upon §§ 303 and 304 (see attached).

4. Under what circumstances are consolidated income tax returns (with corporate affiliates) required or permitted? Is prior approval required?

**ANSWER:** For Illinois income tax purposes "consolidated returns" are not allowed. Illinois does allow "combined returns" for unitary businesses and "composite returns" which refers to a return which a partnership or S corporation files for all of its out-of-state partners/shareholders. This eliminates the need for each such person to file a separate Illinois income tax return. I have included copies of the regulations for these types of returns.

5. Under what circumstances is separate accounting permitted or to be utilized in determining a corporation's income to be taxed by your State? Is separate accounting optional to the corporation or is prior approval required?

**ANSWER:** Separate accounting is allowed only when the circumstances indicate that the prescribed form of allocation and apportionment do not fairly represent the extent of a person's business activity in Illinois. In such circumstances the person may petition, or the Director of Revenue may require, an alternate form of accounting such as separate accounting. This is found at §304(f) of the IITA.

6. For start-up and newly expanded businesses, what allowances and departures from the income apportionment statute are permissible for the transitional years during which the corporation may be expected to encounter added operational expenses? Please describe as appropriate; and,

**ANSWER:** None

7. Should the corporation believe or contend that the apportionment formula prescribed by your State operates so as to apportion more income to the State than is deemed reasonable, based upon its business operations within the State, is there an avenue for equitable relief at the administrative level? Please explain and provide instructional materials, giving any time limitations required.

**ANSWER:** A taxpayer may petition to use an alternative allocation scheme under 35 ILCS 5/304(f) (see attached).

Your assistance in providing this and other helpful information will be greatly appreciated. Of course, the more you are able to elaborate the more complete our analysis can be reflected in

behalf of your State. And, obviously, copies of the tax forms required of non-domiciliary corporations, along with instructions and interpretive regulations will be helpful also.

As mentioned above, this is merely a general information letter and not a statement of policy and is not binding upon the Department. I hope that this has been helpful to you. The Department maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

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